

COTTONWOOD

ENVIRONMENTAL LAW CENTER

Vicki Ferguson
Region 8, Mailcode: 8-OC
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202-1129

August 2, 2013

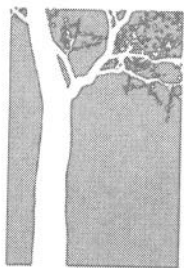
RE: EPA Correspondence w/ Montana DEQ regarding NPDES/MPDES Permitting Program

Dear FOIA Officer,

Pursuant to the federal Freedom of Information Act (5 U.S.C. 552 et. seq.), Cottonwood Environmental Law Center, Inc. (CELC) is filing this request for information. CELC is a 501(c)(3) non-profit, public interest, public education organization.

Montana is a delegated National Pollution Discharge Elimination System (NPDES) program and has adopted by regulation all of the critical features of the CWA for both permits and water quality standards. Nonetheless, Montana's state agency charged with the responsibility for issuing water quality discharge permits (MPDES) – the Montana Department of Environmental Quality – has failed to meet the statutory time constraints for permit issuance and renewal. CELC formally requests an electronic or hard copy of:

- All formal and informal correspondence between the EPA and the Montana DEQ addressing the MPDES program and/or the DEQ's failure to meet the requirements/goals of the CWA.
- All audits of the Montana DEQ's MPDES permitting program and any related correspondence or information related to the NPDES/MPDES program or the DEQ's backlog of permits.
- A February 2008 letter from the EPA to the Montana DEQ expressing concern with the DEQ's commitment to the NPDES permit issuance.
- Any formal or informal agreement between the EPA and the DEQ that calls for reducing the DEQ's MPDES permit backlog.
- Any correspondence between the EPA and the DEQ that addresses the potential loss of federal funding or loss of the state's delegated authority to issue NPDES/MPDES permits.



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- TIME FRAME: For all bullet points above, this request is limited to documents produced between January 1, 2000 and the present.

To my knowledge, this information is not available from any other federal, state, or public agency that is required to provide it. In addition, the release of this information will not result in financial benefit to CELC or any individuals, groups or organizations.

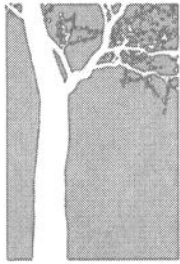
As you know, the Freedom of Information Act (FOIA) provides that if portions of a document are exempt from release, the remainder must be segregated and disclosed. We expect to receive all non-exempt portions of the documents that we have requested, and ask that you justify any deletions by reference to specific exemptions allowed under the FOIA. CELC reserves the right to appeal a decision to withhold any materials.

I hereby request a fee waiver for all search and duplication fees under the FOIA regulations [5 U.S.C. Sec. 552 (a)(4)(A) and 36 CFR 2.19(c)(1)]. The information requested will benefit the citizens of the United States and is for the purpose of public education and to encourage public debate on important policy issues. The information will also benefit the public by contributing to informal discussions between agencies, such as the U.S. Forest Service, and conservation organizations, such as the Greater Yellowstone Coalition and Biodiversity Conservation Alliance. The requested information will be made available to the public through CELC's office and CELC's website. Information available through CELC has the potential to be used in press conferences and releases, regional and national publications, online publications and will reach a significant number of individuals nationwide.

The language of the FOIA clearly indicates that Congress intended fees not to be a barrier to private individuals or public interest organizations seeking access to government records. In addition, the legislative history of the FOIA fee waiver language indicates that Congress intended a liberal interpretation of the phrase "Primarily benefiting the public." This suggests that all fees are to be waived whenever the release of information contributes to public debate on important policy issues. This has been affirmed by the US Court of Appeals for the District of Columbia, in *Better Government Association v. Department of State*, 780 F. 2d 86 (D.C. Cir., 1986). In that case, the Court found that under FOIA, Congress had explicitly recognized the need for non-profit organizations to have free access to government documents and those government agencies cannot impair this free access by charging duplication or search for FOIA information requests (*Id.* at 89).

I appreciate your help with this. Thank you very much for your time.

Sincerely,
/s/ Andrew Gorder



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Staff Attorney
Cottonwood Environmental Law Center
24 S. Willson Ave. Suite 6 & 7
Bozeman, Montana 59715
(406) 587-5800
andrew@cottonwoodlaw.org